IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6776 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALBHAI MEGHABHAI MANKA (SANGHAR)THRO FATHER MEGHABHAI

Versus

STATE OF GUJARAT AND OTHERS

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Appearance :
MR BB NAIK for Petitioner.
MR SHIVANG SHUKLA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/11/2007

ORAL JUDGMENT

1. Invoking Article 226 of the Constitution, the petitioner has sought writ of *habeas corpus* and prayed to set aside order dated 9-1-2007 of preventive detention of the detenue under the provisions of Section 3 of

the Prevention of Anti Social Activities Act, 1985 (for short, "the Act"). It is stated in the grounds of detention furnished to the detenue that the detenue was openly and repeatedly flouting the provisions of the Prohibition Act and an offence was registered in Bhachau Police Station for the offences under Sections 66 (1) B, 65 A, E, 81 and 83 of the Prohibition Act on 7-12-2006 vide C.R.No. 5122/2006. It is also stated that the detenue was released on bail pursuant to aforesaid Criminal Case and, relying upon statements of two witnesses, it was found that the detenue was in habit of dealing in illicit liquor and pressurizing others to indulge in that business by threatening or beating them.

2. The petition was pressed mainly on the grounds that the detenue was implicated in the offence merely as a by-stander and his statement was recorded under duress. It was submitted by learned counsel, Mr.Naik, that the co-detenue and main accused person in the aforesaid case was ordered to be released by decision dated 14-6-2007 of this Court (Coram : Honourable Mr.Justice Akil Kureshi) in Special Civil Application No.4873 of 2007 and the respondents have not challenged that decision.

3. By filing an affidavit of the detaining authority it is, inter alia, stated that, " ..... the muddamal i.e. 5760 bottles of English Liquor were seized from the premises of Pancha Dahyabhai Harijan. However the petitioner was present at the premises when raid was conducted. The police personnel have also recorded the statements of petitioner as well as Madhabhai Bavabhai Thakore who was also present at the premises when the raid was conducted, and they have admitted before the police officers that they were indulging in the activities of bootlegging. It is submitted that even the Panchnama records that the petitioner was present in the premises at the time when the raid was

conducted. Therefore, the FIR is lodged against the petitioner and other two co-accused, and the said persons were also arrested and thereafter enlarged on bail by the competent Court."

4. It is submitted in the affidavit that a large quantity of liquor bottles had been recovered and they were prejudicially affecting maintenance of public order as consumption of liquor affects public health and it is held by this Court that activities of bootlegging is injurious to public health and, therefore, injurious to maintenance of public order. Another affidavit of the Additional Secretary is filed on behalf of the respondents to aver and substantiate that there was no delay in consideration of representation of the detenue which had been disposed expeditiously.

5. Learned counsel for the petitioner, Mr.Naik, besides relying upon the aforesaid judgment of this Court in Special Civil Application No.4873 of 2007 in the case of co-accused, relied upon the judgment of this Court in **Madanlal Hiralal Savariya v. State of Gujarat and Others [1999 (2) GLR 1074]** to submit that while the aforesaid judgment of this Court was not even challenged, not releasing the detenue would amount to violation of Article 14 of the Constitution. He submitted that co-detenue being released by an order of this Court makes case of the detenue better than the case in which the co-detenue was released upon the report of the Advisory Board. Learned counsel also relied upon the judgment of this Court in **Dilipbhai Keshavbhai Patel v. Commissioner of Police and Others [2001 (2) GLH 722]**, wherein the consideration which prevailed with the State Government for release of co-detenue was that there was only one case against him and that ground was equally applicable to the detenue, and the State Government had taken a somersault and relying upon the aforesaid judgment in **Madanlal Hiralal Savariya** (Supra) the Court had allowed the petition with cost. Learned

counsel also relied upon the judgment of the Supreme Court in **Alpesh Navinchandra Shah v. State of Maharashtra and Others [(2007) 2 SCC 777]** in which, on a different set of facts, the Supreme Court found that the petitioner therein had ceased his activities in the field of import or export, had paid tax with penalty and there was nothing on record to show that he had indulged in any such activity in the recent past. Therefore, the purpose of passing the detention order i.e. preventing the detenue from continuing his prejudicial activity was not likely to be served, and hence, the order of detention was quashed. It was also pointed out from record that while the co-detenue implicated in the same criminal case was also implicated in another case, there was only one case registered against the detenue in which also, admittedly, the detenue was only found to be present at the premises and there was no other material to sustain the subjective satisfaction recorded by the detaining authority.

6. In the above facts and circumstances, since admittedly, the respondents have not challenged the order by which co-detenue was released and neither any other circumstance was cited nor any other argument addressed to distinguish the case of the detenue from the case of the other detenue, the petition is required to be allowed. Accordingly it is allowed, the impugned order is set aside and the detenue is ordered to be released forthwith, if not required in any other case to be detained in jail. Rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J.)

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